



# OVERVIEW OF HB 952, 955, 956 (2020 SESSION)

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# DISCLAIMER

DLS TAKES NO POSITION ON LEGISLATION. THIS PRESENTATION IS BRIEF LEGAL ANALYSIS TO EDUCATE MEMBERS OF THE ADVISORY COMMITTEE



# OVERVIEW OF VCDPA

- HB 2307 & SB 1392
- 10 sections
  - Definitions
  - Scope
  - Personal Data Rights
  - Data Controller Responsibilities
  - Responsibility According to Role
  - Data Protection Assessments
  - Limitations
  - Investigative Authority
  - Enforcement
  - Consumer Privacy Fund

# VCDPA DEFINITIONS & SCOPE

- Defines terms such as:
  - Controller
  - Processor
  - De-identified data
  - Biometric data
  - Personal Data
  - Targeted Advertising
  - Child
- Applies to businesses that operate in VA and
  - Control or process the data of at least 100,000 consumers or
  - Control or process the data of at least 25,000 consumers and derive more than 50% of revenue from the sale of personal data
- Exemptions
  - Body, board, authority, agency of the Commonwealth
  - Non-profits
  - Sensitive Data covered by Federal regulations
    - HIPAA
    - Graham-Leach-Bliley Act

# VCDPA PERSONAL DATA RIGHTS

A controller shall comply with an authenticated consumer request to exercise the right:

1. To confirm whether or not a controller is processing the consumer's personal data and to access such personal data;
2. To correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;
3. To delete personal data provided by or obtained about the consumer;
4. To obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance, where the processing is carried out by automated means; and
5. To opt out of the processing of the personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer



# VCDPA DATA CONTROLLER RESPONSIBILITIES & ASSESSMENTS

- Data Controller
  - Must limit data collection to what is reasonable, adequate, and necessary
- Controllers & Processors must enter into contracts outlining responsibilities
- Sensitive Data, such as that collected from children, requires greater protection
  - Child is 13 years or younger as used in GDPR
- Routine assessments required following:
  - The processing of personal data for targeted advertising
  - The sale of personal data
  - The processing of personal data for purposes of profiling
  - The processing of sensitive data
  - Processing activities involving personal data that present a heightened risk of harm to consumers.

# VCDPA LIMITATIONS

- The VCDPA does not limit data controller's and processor's ability to:
  - Comply with investigations
  - Adhere to applicable state, and federal laws
  - Prevent or respond to security incidents
  - Comply with discovery requests



- The VCDPA does not restrict a controller's or processor's ability to collect, use, or retain data to:
  1. Conduct internal research to develop, improve, or repair products, services, or technology;
  2. Effectuate a product recall;
  3. Identify and repair technical errors that impair existing or intended functionality; or
  4. Perform internal operations that are reasonably aligned with the expectations of the consumer

# VCDPA INVESTIGATIVE AUTHORITY & ENFORCEMENT

- The Attorney General has exclusive authority over enforcement
- Each violation carries a maximum civil penalty of \$7,500
- Controllers and Processors are afforded a thirty day period to cure alleged violations
- All proceeds recovered shall revert to the Consumer Privacy Fund in the State Treasury





# HB 952 DIGITAL SERVICES; PROTECTION FOR MINORS.

- Patron Del.Ayala
- **Digital services; protection for minors.** Requires the operator of a digital service, which is defined as a website, online service, online application, or mobile application, to permit minors to remove, or to request and obtain removal of, content or information posted on a digital service. The measure prohibits an operator of a digital service directed to minors from marketing or advertising to minors specified products or services that minors are prohibited from buying. The measure also prohibits marketing or advertising certain products on the basis of personal information specific to a minor or knowingly using, disclosing, compiling, or allowing a third party to do so. Violations are prohibited practices under the Virginia Consumer Protection Act. The measure has a delayed effective date of January 1, 2021.

# HB 952 DIGITAL SERVICES; PROTECTION FOR MINORS.

## HB 952

- § 59.1-572. Duties of operator of a digital service.
  - “1. Permit a minor...to remove...content...on the operator's digital service...;
  - 2. Provide notice to a minor...that the minor may remove...content or information posted on the operator's digital service...;
  - 3. Provide clear instructions to a minor...on how the minor may remove...content...; and
  - 4. Provide notice to a minor...that the removal described under subdivision 1 does not ensure complete or comprehensive removal of the content...”

## VCDPA

- §59.1-572. Scope; exemptions
  - “D. Controllers and processors that comply with the verifiable parental consent requirements of the Children's Online Privacy Protection Act (15 U.S.C. § 6501 et seq.) shall be deemed compliant with any obligation to obtain parental consent under this chapter”
  - Children's Online Privacy Protection Act (15 U.S.C. § 6501 et seq.) requires operators to comply with parent requests concerning child data

# HB 952 DIGITAL SERVICES; PROTECTION FOR MINORS.

## § 59.1-573. Prohibited marketing or advertising on digital services directed to minors.

- “A. An operator of a digital service directed to minors shall not market or advertise a restricted product or service on its digital service directed to minors.
  - 1. Shall not market or advertise a restricted product or service to a minor who the operator has actual knowledge is using its digital service and is a minor...”
- Examples of Restricted products
  - Alcohol; rifles; weapons; tobacco; fireworks; tanning devices; etc.

## § 59.1-574. Violations of chapter; penalty

- “Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the 273 provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the 274 Virginia Consumer Protection Act (§ 59.1-196 et seq.).”

# HB 955 CHILDREN'S ONLINE PRIVACY PROTECTION; RELEASE OF PERSONAL INFORMATION PROHIBITED.

- Patron Del.Ayala
- **Children's online privacy protection.** Prohibits any person who operates a website for commercial purposes and who collects or maintains personal information from or about the users of or visitors to such website or online service from releasing personal information collected from minors for any purpose, except where the personal information is provided to a person other than an operator that provides support for the internal operations of the website, online service, online application, or mobile application of the operator, excluding any activity relating to targeted marketing directed to minors, and does not disclose or use that personal information for any other purpose. The measure also requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. A violation is a prohibited practice under the Virginia Consumer Protection Act. The measure has a delayed effective date of January 1, 2021.

# HB 955 CHILDREN'S ONLINE PRIVACY PROTECTION; RELEASE OF PERSONAL INFORMATION PROHIBITED.

## HB 955

- § 59.1-572. Release of personal information collected from minor prohibited; measure to protect confidentiality required.
  - “A. No operator shall release personal information collected from a minor for any purpose, except where the personal information is provided to a person other than an operator that provides support for the internal operations of the website, online service, online application, or mobile application of the operator, excluding any activity relating to targeted marketing directed to minors, and does not disclose or use that personal information for any other purpose.”

## VCDPA

- § 59.1-574. Data controller responsibilities; transparency.
  - “[a Controller shall] 2. Except as otherwise provided in this chapter, not process personal data for purposes that are neither reasonably necessary to nor compatible with the disclosed purposes for which such personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent;

# HB 956 VIRGINIA CONSUMER PROTECTION ACT; PROHIBITS ADVERTISING FOR SALE OF DEVICES TARGETING CHILDREN.

- Patron Del.Ayala
- **Virginia Consumer Protection Act; advertising or offering for sale of Internet-connected devices targeting children; prohibition.** Prohibits the advertising or offering for sale of Internet-connected devices for which the target market consists of consumers below 18 years of age by making it unlawful under the Virginia Consumer Protection Act.

# HB 956 VIRGINIA CONSUMER PROTECTION ACT; PROHIBITS ADVERTISING FOR SALE OF DEVICES TARGETING CHILDREN.

## HB 956

- § 59.1-200. Prohibited practices.
  - “A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:
    - **61. Advertising or offering for sale Internet-connected devices for which the target market consists of consumers below 18 years of age.”**
- § 59.1-201.1. Attorney General empowered to issue civil investigative demands.
  - “Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand.”

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## ■ Questions?

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